

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

Springfield, Massachusetts

CIVIL ACTION No. 05-30016-MAP

Marcos Y. Kleinerman, Pro Se
215 Sunset Avenue, Amherst, MA 01002

PLAINTIFF

vs.

Michael M. Salour, James H. Bechtel and IPITEK
(also known as IPICOM, Inc.)

DEFENDANTS

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF ORDER TO EXECUTE
DEFENDANTS' PROPOSED PROTECTIVE ORDER**

Plaintiff respectfully moves this court to reconsider its order to the parties to execute the Protective Order proposed by the defendants and attached as Exhibit 1 to Defendants' Partial Opposition to Plaintiff's Motion for Adequate Protective Order. As grounds for this motion Plaintiff submits that the court has erred grievously as follows:

(1) The court is inconsistent with U.S. Patent Law, **35 U.S.C. 271(a)** which states:

(a) Except as otherwise provided in this title, whoever without authority, makes, **uses**, offers to sell or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

(added emphasis). Since the law allows a patent holder to sue **unauthorized users** under this law and **35 U.S.C. 281 to 284**, the above text clearly implies that the patent holder has a right to learn of the identity of said users.

(2) The court finding that "Plaintiff has no demonstrable need at this time for the names of Defendants' customers" is unwarranted in view of the explicit intent of the discovery rules **FRCP 26(b)(1)**, according to which a litigating party is entitled to discover

any matter, not privileged, that is relevant to the claim or defense of any party, including... **the identity and location of persons having knowledge of any discoverable matter**

(added emphasis).

(3) Without knowing the identities of Defendants' customers the plaintiff is effectively precluded from litigating Count I of the complaint, since the identity of the customers is essential for adequately determining whether the fiber optic thermometers they have bought from defendant IPITEK are used for some limited applications subject of an exclusive license granted by the plaintiff to the Luxtron Corporation (the only entity that was granted an exclusive license for said limited applications).

(4) The court's order, made three days after receiving the defendants' Partial Opposition to Plaintiff's Motion for Adequate Protective Order, was rendered without a hearing and without any apparent effort to determine whether the defendants had any basis for accusing the plaintiff of being "a direct competitor of Ipitek" and of having abused in the past his knowledge of the names of customers of Ipitek (or any other manufacturer or vendor of fiber optic thermometers or any other devices). Plaintiff's Affidavit 8-05-05 attached to this motion addresses these false accusations.

(5) The Protective Order, which allows the defendants to withhold from Plaintiff any document which they label "For Attorneys Eyes Only", is inconsistent with Plaintiff's rights as a Pro Se litigant.

REQUEST FOR ORAL ARGUMENT

Plaintiff respectfully requests a hearing on this motion.

Respectfully submitted,


Dated: August 5, 2005


Marcos Y. Kleinerman, Pro Se
Plaintiff

Certificate of Service

I hereby certify that a true copy of this Motion and the attached documents were served today by First Class mail to the counsel for the defendants, James A.G. Hamilton, at Perkins, Smith & Cohen LLP, One Beacon Street, 30th Floor, Boston, MA 02108-3106.

Dated: August 5, 2005


Marcos Y. Kleinerman, Pro Se
Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

Springfield, Massachusetts

CIVIL ACTION No. 05-30016-MAP

Marcos Y. Kleinerman, Pro Se
215 Sunset Avenue, Amherst, MA 01002

PLAINTIFF

vs.

Michael M. Salour, James H. Bechtel and IPITEK
(also known as IPICOM, Inc.)

DEFENDANTS

PLAINTIFF'S AFFIDAVIT 8-05-05

I, Marcos Y. Kleinerman, declare the following:

(1) I am not now nor have I ever been a manufacturer or seller of optical thermometers, nor do I have any business links with any manufacturer or vendor of optical thermometers.

(2) My only business activities regarding optical thermometers have been and are the invention and patenting of new or improved methods and devices for temperature measurements, and licensing specific patent claims covering said methods and/or devices to legitimate manufacturers and/or vendors.

(3) I am not now nor have I ever been a competitor of IPITEK, whether direct or indirect, nor do I have any business relationship with any competitor of IPITEK.


(4) I have never been found by any court to have abused my knowledge of the names of customers of IPITEK or any other manufacturer or vendor of fiber optic thermometers or any other devices, nor has any customer of Ipitek or any other manufacturer or vendor ever complained to me of abuse.

(5) My only purpose for which I sought and seek access to the identities of the users of Ipitek's fiber optic thermometers using luminescent probes is to reliably determine and verify whether the fiber optic thermometers they have bought from defendant IPITEK are used for some limited applications subject of an exclusive license granted by the plaintiff to the Luxtron Corporation (the only entity that was granted an exclusive license for said limited applications)

I declare that the above statements are true to the best of my knowledge and recollection.

Signed under the pains and penalties of perjury,

Date: August 5, 2005


Marcos Y. Kleinerman, Pro Se
Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

Springfield, Massachusetts

CIVIL ACTION No. 05-30016-MAP

Marcos Y. Kleinerman, Pro Se
215 Sunset Avenue, Amherst, MA 01002

PLAINTIFF

vs.

Michael M. Salour, James H. Bechtel and IPITEK
(also known as IPICOM, Inc.)

DEFENDANTS

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR RECONSIDERATION
OF ORDER TO EXECUTE DEFENDANTS' PROPOSED PROTECTIVE ORDER**

I. INTRODUCTION

On May 18, 2005, this Court issued a SCHEDULING ORDER including, *inter alia*, the following order:

2. The parties shall **complete** (added emphasis) their automatic disclosures by June 30, 2005, which disclosures shall also include:
- (a) disclosures concerning Plaintiff's licensing of the claims asserted and receipts related thereto; and
 - (b) Defendants's sales of all optical thermometers using luminescent probes.

Plaintiff, in compliance with the SCHEDULING ORDER, faxed to the defendants' counsel, on June 30, 2005, 43 pages including true copies of **all** documents in the plaintiff's possession or control relating to Plaintiff's licensing of the claims asserted and receipts related thereto.

As of August 5, 2005 the defendants have not disclosed the documents relating to IPITEK's sales of any optical thermometers. Instead, the defendants, proposed to the plaintiff, by e-mail, to withhold such documents until he and the plaintiff meet for settlement discussions. He also indicated that even at such meeting he would not provide copies for the plaintiff.

Since the defendants' disclosure of its sales of optical thermometers was an essential

step in settlement negotiations between the parties, these negotiations were essentially terminated by the defendants' failure to comply with the order. Further contributing to the break of negotiations, the defendants have made unfounded allegations and accusations in their submissions to the court which cast doubt on the defendants' willingness to negotiate in good faith.

The defendants also sought a protective order containing a provision which deprives the plaintiff of access to information which the defendants choose to label "For Attorneys Eyes Only".

On July 9, 2005 Plaintiff filed,

(a) "PLAINTIFF'S MOTION FOR ORDER COMPELLING DISCLOSURE AS PRESCRIBED BY THE COURT'S SCHEDULING ORDER", regarding the defendants' sales of optical thermometers, and

(b) "PLAINTIFF'S MOTION FOR ADEQUATE PROTECTIVE ORDER", requesting a protective order that would not include said "Attorneys Eyes Only" provision.

On July 25, 2005 this court received, as entered in the Docket Report, the defendants' oppositions to said two Plaintiff's motions. In their opposition to Plaintiff's Motion for Adequate Protective Order the defendants alleged, *inter alia*, that Kleinerman "is a direct competitor of Ipitek and stands to gain substantial financial advantages by using the names of Ipitek's customers to intimidate and/or to sell to them", and that "Kleinerman should not be allowed access to the names of Ipitek's customers for optical thermometers using luminescent probes because he has abused this knowledge in the past".

On July 28, 2005, three days after receiving the defendants' opposition to Plaintiff Motion for Adequate Protective Order, and without a hearing or any other apparent effort to examine the basis, if any, of the defendants' allegations and accusations, the Court ordered the plaintiff to execute the Protective Order sought by the defendants, including said "For Attorneys Eyes Only" provision.

2. THE ISSUES

The issues at hand can be expressed by the following questions:

(1) Is it within the Court's discretionary authority to require the plaintiff to give up his rights under **35 U.S.C. 271(a)** to know the identity of entities who have used his patented inventions without authorization?

(2) Is it consistent with the federal and local discovery rules to require the Plaintiff to renounce his right to examine information necessary for the adjudication of this case if the defendants choose to label it "For Attorneys Eyes Only"?

(3) Is the court's decision consistent with a careful consideration of the facts and allegations made by the opposing parties in their pleadings?

Plaintiff submits that the answer to each of the above three question is NO.

3. DISCUSSION

3.1. PATENT LAW GOVERNING INFRINGEMENT, 35 U.S.C. 271(a) AND 281-284, CLEARLY GIVES THE PLAINTIFF THE RIGHT TO KNOW THE IDENTITY OF THE USER'S OF PLAINTIFF'S PATENTED TECHNOLOGY.

In its explanation of its order, the court stated: "Plaintiff has no demonstrable need at this time for the names of Defendants' customers". This is a surprising statement. **35 U.S.C. 271(a)** states:

(a) Except as otherwise provided in this title, whoever without authority, makes, **uses**, offers to sell or sells any patented invention, within the United States, or imports into the United States any patented invention during the term of the patent therefor, infringes the patent

(added emphasis). **35 U.S.C. 281-284** explicitly allows a patentee to sue said unauthorized users for damages. It clearly follows that the patentee has a right to know the identities and addresses of said users, namely those who have purchased Ipitek's optical thermometers using luminescent probes. And Plaintiff has clearly indicated (see Plaintiff's Affidavit 8-05-05 attached to the motion) that he has no intention of suing Ipitek's customers. All he wants is to reliably determine and verify whether the fiber optic thermometers they have bought from defendant IPITEK are used for some limited applications subject of an exclusive license granted by the plaintiff to the Luxtron Corporation (the only entity that was granted an

exclusive license for said limited applications).

3.2. THE DISCOVERY RULES CLEARLY ESTABLISH PLAINTIFF'S RIGHT TO KNOW THE IDENTITY OF THE USERS OF PLAINTIFF'S PATENTED TECHNOLOGY.

The court finding that "Plaintiff has no demonstrable need at this time for the names of Defendants' customers" is unwarranted in view of the explicit intent of the discovery rules, **FRCP 26(b)(1)**, according to which a litigating party is entitled to discover

any matter, not privileged, that is relevant to the claim or defense of any party, including... *the identity and location of persons having knowledge of any discoverable matter*

(added emphasis). Ipitek's customers are precisely "the persons having knowledge of" the most important discoverable matter relating to Count I, as discussed in section 3.1 above.

3.3. A PROTECTIVE ORDER INCONSISTENT WITH BOTH PATENT LAW AND THE DISCOVERY RULES, DENYING A PRO SE LITIGANT ACCESS TO DOCUMENTS NEEDED TO LITIGATE HIS CASE, IS BOTH UNJUST AND UNPRECEDENTED.

Neither the defendants nor the court have cited any legal precedent justifying the denying to a *Pro Se* litigant access to discoverable information when the right to such access has been explicitly established by both Patent Law and the discovery rules. In *Luxtron v. Kleinerman*, civil action No. **C.99-20742 RMW**, U.S. District Court, Northern District of California, San Jose Division (settled out of court in terms favorable to Kleinerman), also relating (in part) to sales of Plaintiff's patented devices, the Luxtron Corporation, in accordance with a Protective Order (attached **EXHIBIT A**) that recognized the right of the *Pro Se* litigant (Kleinerman) to inspect without exceptions any document produced made all its sales data, **including the identity of its customers**, available for inspection to Kleinerman, who was then as he is now a *Pro Se* litigant, in compliance with the Protective Order issued by the court

3.4. CONTRARY TO THE DEFENDANTS ALLEGATIONS, PLAINTIFF IS NOT NOW NOR HAS HE EVER BEEN A COMPETITOR OF IPITEK'S, NOR HAS HE EVER BEEN FOUND TO HAVE ABUSED HIS KNOWLEDGE OF THE NAMES OF CUSTOMERS OF IPITEK OR ANY OTHER FIRM

Plaintiff submits that, when any party makes, in the pursuit of a favorable ruling by the court, a pleading consisting basically on accusations which, in the absence of supporting evidence at least border on slander of the adversary party, it is erroneous for the court to rule on the basis of such pleading without a hearing and without any apparent effort to determine whether there is at least minimal support for said accusations. The defendants, after falsely alleging that Plaintiff is "a direct competitor of Ipitek", have accused Kleinerman of having abused in the past his knowledge of the names of customers of at least one manufacturer or vendor of fiber optic thermometers or any other devices. Such allegations and accusations are a subject of the attached Plaintiff's Affidavit 8-05-05.

4. CONCLUSION

In view of the preceding discussion, Plaintiff submits that this motion for reconsideration of the order of the court to execute Defendants' proposed Protective Order should be allowed.

Respectfully submitted,

Dated: August 5, 2005


Marcos Y. Kleinerman, Pro Se
Plaintiff

EXHIBIT A

COPY

1 SIDLEY & AUSTIN
 2 Peter I. Ostroff (SBN 045718)
 3 Rollin A. Ransom (SBN 196126)
 4 555 W. Fifth Street
 5 40th Floor
 6 Los Angeles, CA 90013
 7 213-896-6000 (telephone)
 8 213-896-6600 (facsimile)

9 Attorneys for Plaintiff
 10 Luxtron Corporation

11 Marcos Y. Kleinerman
 12 24 Jerome Street
 13 Southbridge, Massachusetts 01550
 14 508-764-2286 (telephone)
 15 508-765-1621 (facsimile)

16 Defendant Pro Se

17 **RECEIVED**

18 UNITED STATES DISTRICT COURT

19 FEB 18 2000

20 NORTHERN DISTRICT OF CALIFORNIA

21 RICHARD W. WICKING
 22 CLERK, U.S. DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA
 24 SAN JOSE

25 SAN JOSE DIVISION

26 Luxtron Corporation

) Case No. C.99-20742 RMW

27 Plaintiff,

28 vs.

) [Proposed] PROTECTIVE ORDER

29 Marcos Y. Kleinerman

) Judge: Magistrate Judge

30 Defendant.

) Patricia V. Trumbull

31 PROTECTIVE ORDER

32 This Protective Order ("Order") is entered pursuant to
 33 the stipulation between plaintiff Luxtron Corporation ("Luxtron")
 34 and defendant Marcos Y. Kleinerman ("Kleinerman") and the Court's
 35 resolution of certain disputed provisions of this Order. The
 36 parties recognize that some of the documents, information or
 37 material to be produced in this lawsuit may include trade secrets

38 PROTECTIVE ORDER
 39 CASE NO. C.99-20742 RMW

1 or other confidential, commercial or financial information. The
2 production of documents, information or materials which either
3 party or a third-party contends includes trade secrets, know-how,
4 or other confidential, technical, commercial or financial
5 information shall be governed by this Order, which is entered
6 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.
7 Therefore, it is ORDERED THAT:

8 A. This Order shall be applicable to and govern the exchange
9 of documents, things, and information or other material,
10 depositions, answers to interrogatories, responses to requests for
11 admissions and all other discovery taken pursuant to the Federal
12 Rules of Civil Procedure or any alternative dispute resolution
13 proceeding, as well as testimony adduced at trial, matters in
14 evidence and other information that the disclosing party
15 designates as Confidential ("Confidential Material") hereafter
16 furnished, directly or indirectly, by or on behalf of any party or
17 nonparty (a "Producing Party") in connection with this action.

18 B. A Producing Party may designate as "Confidential" any
19 material that it in good faith believes constitutes or reflects
20 proprietary information, confidential business information, or
21 trade secret information of the party or of a nonparty
22 ("Confidential Material"). If Confidential Material was produced
23 prior to entry of this Order, the Producing Party shall identify to
24 the other party within twenty days of notice of entry of this Order
25 the documents it deems to be Confidential Material by stating in
26 correspondence to the other party the Bates number(s) of the
27 document(s) to be designated as "Confidential" or otherwise
28 identifying with particularity such documents. Each party agrees

1 that it will be its or his respective responsibility to thereafter
2 maintain designated documents as Confidential Material.

3 C. Confidential Material shall be used by the requesting
4 party solely for the purpose of conducting this litigation to its
5 ultimate termination.

6 D. Subject to the provisions of paragraph E, information
7 designated as Confidential Material may be disclosed only to the
8 following persons:

9 1. outside counsel of record for the receiving party
10 and all legal associates, paralegal assistants, stenographic and
11 clerical employees working under the direct supervision of such
12 counsel in connection with this matter;

13 2. in-house counsel of the receiving party or the
14 parent company of the receiving party directly working on this
15 litigation and all paralegal assistants, stenographic and clerical
16 employees working under the direct supervision of such counsel;

17 3. independent experts or consultants of the receiving
18 party who have been expressly retained to assist in preparation of
19 this action for trial, with disclosure only to the extent necessary
20 to perform such work, and defendant's general attorney;

21 4. any director, officer, or employee of a party or the
22 parent company of a party if such person directly works on this
23 litigation, with disclosures only to the extent necessary to
24 perform such work;

25 5. upon agreement of the Producing Party or with leave
26 of Court, any person of whom testimony is taken, except that such
27 person (if not otherwise permitted access to Confidential Material
28

1 under this Order) may only be shown Confidential Material during
2 his or her testimony, and may not retain any Confidential Material;

3 6. the Court;

4 7. court reporting personnel involved in taking or
5 transcribing testimony in this action;

6 8. the pro se defendant; and

7 9. any person that the Court designates in the interest
8 of justice, upon terms that the Court deems proper.

9 E. Access to Confidential Material (as provided in paragraph
10 D) shall be allowed to a person identified in paragraphs D(3)
11 through D(5) only after the person has been made aware of the
12 provisions of this Order and has manifested his or her assent to be
13 bound thereby by signing a copy of the attached Acknowledgment.
14 The signed Acknowledgment shall be retained by the party who is
15 disclosing the Confidential Material to such person or by the
16 outside counsel for such party.

17 F. In addition to the foregoing restrictions, Kleinerman
18 shall not contact former, current, or prospective customers or
19 independent customer representatives of Luxtron, or any employee of
20 such customers or independent customer representatives
21 (collectively, "Customer"), except through discovery methods
22 authorized under the Federal Rules of Civil Procedure and subject
23 to the terms of preliminary injunction issued by this Court on
24 September 8, 1999.

25 G. If a Producing Party has information that is subject to
26 discovery and such information was supplied to the Producing Party
27 by a nonparty under an obligation of confidentiality given in the
28 ordinary course of business, the Producing Party shall, within ten

1 calendar days of receipt of a request for such information, provide
2 notice to the nonparty that such information has been requested by
3 the requesting party subject to the terms of this Order. Such
4 nonparty shall have the opportunity, within fourteen calendar days,
5 including weekends and holidays, from transmittal of said notice,
6 to come before this Court and state the grounds for any objection
7 to such request, and the Producing Party shall have no obligation
8 to produce such information to the requesting party until
9 expiration of this fourteen-day period or, if the nonparty timely
10 objects to such production, until resolution of the nonparty's
11 objections, whichever is later.

12 H. The recipient of any Confidential Material that is
13 provided under this Order shall exercise the same standard of due
14 and proper care with respect to the storage, custody, use and/or
15 dissemination of such information as is exercised by the recipient
16 with respect to its own proprietary information, but in no event
17 less than reasonable care.

18 I. A Producing Party shall designate documents,
19 interrogatory answers, responses to requests to admit, and the
20 information contained therein as Confidential Material by placing
21 the legend "Confidential" or other similar designation on any such
22 document prior to production. If a Producing Party inadvertently
23 fails to designate a document or information as Confidential
24 Material at the time of production, that person or party shall have
25 five business days after such production to designate the document
26 or other information.

27 J. In the case of depositions, the following procedures
28 shall be followed:

1 1. The party who notices any deposition shall provide a
2 copy of this Order to the officer reporting the deposition. Such
3 officer shall acknowledge receipt of a copy of this Order by
4 executing an acknowledgment in the form attached hereto as Exhibit
5 A. Such acknowledgment shall thereafter be in effect for any
6 subsequent depositions reported by such officer. Failure of the
7 officer to execute a declaration of compliance shall not affect the
8 parties' obligation to maintain the confidentiality of the
9 Confidential Material designated pursuant to the terms of this
10 Order.

11 2. Designation of the portion of the transcript
12 (including exhibits) that contains Confidential Material shall be
13 made either (a) by a statement to such effect on the record in the
14 course of the deposition or (b) upon review of such transcript by
15 counsel for the Producing Party, if counsel notifies opposing
16 counsel of the designation within ten business days after counsel's
17 receipt of the transcript. Counsel shall list the numbers of the
18 pages of the transcript containing Confidential Material, attach
19 the list to the transcript, and mail copies to counsel for all
20 parties. Pending such designation by counsel, the entire
21 deposition transcript, including exhibits, shall be deemed
22 Confidential Material. If no designation is made on the record or
23 within ten business days after receipt of the transcript, the
24 transcript shall be considered not to contain any Confidential
25 Material.

26 3. Counsel for the Producing Party whose Confidential
27 Material is about to be disclosed at the deposition, may also
28 request that all persons who are not entitled to have access to

1 such material under this Order leave during the confidential
2 portion of the deposition.

3 K. Transcripts of depositions or portions thereof shall not
4 be filed with the Court unless it is necessary to do so for
5 purposes of trial, motions, or other related matters. If a
6 deposition transcript or any portion thereof is filed and if it
7 contains Confidential Material, the transcript or portion thereof
8 shall bear the appropriate legend on the caption page and shall be
9 filed under seal.

10 L. A party may challenge the propriety of a "Confidential"
11 designation, including without limitation the designation of
12 deposition testimony as "Confidential," as set forth in this
13 paragraph. A party shall not be obligated to challenge the
14 propriety of a "Confidential" designation at the time made, and
15 failure to do so shall not preclude a subsequent challenge thereto.
16 If any party to this litigation disagrees with a designation, such
17 party shall provide to the Producing Party written notice of its
18 disagreement with the designation. The parties shall first try to
19 dispose of such dispute in good faith on an informal basis. If the
20 dispute cannot be resolved, the party challenging the designation
21 may request appropriate relief from the Court no sooner than two
22 business days after written notice of its disagreement and no later
23 than two months after the close of discovery or two months
24 following the receipt of the designation (or, in the case of
25 deposition testimony, two months following receipt of the
26 corresponding deposition transcript), whichever is later.

27 M. If a party files Confidential Material with the Court,
28 the party making the filing shall file the paper in a sealed

1 envelope, with a cover sheet referencing the case name and number
2 and stating:

3 DOCUMENT FILED UNDER SEAL

4 Confidential - This document is subject to a
5 Protective Order issued by Magistrate Judge
6 Patricia Trumbull on [insert date] and may not
7 be examined or copied except in compliance with
8 that Order.

9 If the filing party fails to make the above designation, any party
10 may do so.

11 N. If any Confidential is used in any court proceeding in
12 connection with this litigation, it shall not lose its status
13 through such use, and the parties shall take all steps reasonably
14 required to protect its confidentiality during such use.

15 O. Nothing in this Order shall preclude any party to the
16 lawsuit or its attorney (1) from showing a document designated as
17 Confidential Material to an individual who prepared or received
18 that document, (2) from disclosing or using, in any manner or for
19 any purpose in this litigation, the party's own information or
20 documents which the party itself has designated as Confidential
21 Material, or (3) from showing a document designated by the
22 disclosing party as Confidential Material to an individual who is a
23 current employee, officer, or director of or is testifying on
24 behalf of the Producing Party.

25 P. Within sixty calendar days after the termination of this
26 litigation, all Confidential Material and all copies thereof shall
27 be returned to the party that produced them or shall be destroyed.
28 If the material is destroyed, a Certification of Destruction signed

1 by counsel shall be provided to the Producing Party within ten
2 business days after the destruction of the documents.

3 Q. This Order is without prejudice to the right of any party
4 to seek relief from the Court, upon good cause shown, from any of
5 the provisions contained in this Order. The parties may reach an
6 agreement to modify the times or dates set forth in this Order
7 without the consent of the Court.

8
9 Dated: 3/9/00

PATRICIA V. TRUMBULL
United States District Judge
Magistrate

ACKNOWLEDGMENT TO BE BOUND BY ORDER

I hereby acknowledge that I have received a copy of the Order entered in Luxtron Corp. v. Kleinerman, No. C.99-20742 RMW (N.D. Cal.), I have read that Order, I understand the terms, conditions, and restrictions imposed by that Order on one who is given access to confidential documents and information pursuant to that Order, and I agree to be bound by all of the terms, conditions, and restrictions imposed by that Order.

I will return, in accordance with paragraph P of that Order, all confidential documents, material, and information I receive to counsel who provided them to me. I acknowledge that the return or subsequent destruction of such documents, material, and information shall not relieve me from any of the obligations imposed on me by that Order.

I further acknowledge that I understand that I may be subject to sanctions imposed by the Court, including an order of contempt, if I fail to abide by and comply with that Order.

Dated: _____

Name

Business Address and Telephone: _____

Occupation